

## WALPOLE ZONING BOARD OF APPEALS MINUTES OF OCTOBER 28, 2015

A regular meeting of the Walpole Zoning Board of Appeals was held on Wednesday, October 28, 2015 at 7:00 p.m. in the Main Meeting Room, Town Hall. The following members were present: Matthew Zuker, Chairman; James DeCelle, Vice Chairman (7:15 p.m.); Craig Hiltz, Clerk; Mary Jane Foley, Susanne Murphy, and Timothy Foley, Associate Member.

Mr. Zuker opened the meeting at 7:09 p.m.

Susanne Murphy recused herself.

**7:10 p.m. Stephen Townsend, 321 East Street, Case No. 12-15 Continued Hearing:** Mr. Zuker informed Mr. Townsend that at the moment there were only four members present and he had the right to a five member board. He further explained that due to the fact the Mr. Townsend was asking for a Variance, he would need to have four affirmative votes. Mr. Townsend stated he would like to go forward with four members.

Mr. DeCelle arrived at 7:15 p.m.

Mr. Townsend represented himself. He stated his house was built in 1963 by his grandparents and is a very small house and submitted some pictures to the board. He would like to build a garage in his backyard and add a new driveway. Mr. Zuker stated the proposed garage is an accessory structure and cannot be more than 40% of the gross area, which it is. Mr. Zuker stated that previously the board and Mr. Townsend discussed the definition and requirements for a variance and he asked Mr. Townsend to speak to that. Mr. Townsend stated he would like a heated driveway and a boiler in the garage. It is very treacherous entering the street. Ms. Coffey stated she looked at this property and can see how someone would have a problem getting up or down this driveway. It is very choppy.

Mr. Zuker discussed the definition of a basement versus a cellar. Mr. Foley stated we don't have the grade but asked Mr. Townsend if the photo shows the cellar and Mr. Townsend stated yes. Mr. DeCelle stated we need the average grade and he believes he asked for that at the last meeting. Mr. Zuker asked how big is the garage and Mr. Townsend stated they are proposing 34' x 30'. Mr. Zuker stated he is personally struggling with this. If it was shown on the plan that the basement was actually a basement, the garage could be 650 s.f. by right and you are over 1,000 s.f. right now. We need to see the topography on the plan. He stated that the pictures are great, but there is clearly a topo that needs to be met. Mr. DeCelle asked if he did the sketch and Mr. Townsend stated a buddy of his did it. Mr. Zuker stated that attaching the garage was an option that may or may not need any relief. Mr. Townsend stated that as discussed at the last meeting, the kitchen and bedroom are at the back of the house and attaching the garage would make the kitchen at the center. Mr. Zuker agrees there is a need for the garage and that there are some topo issues. He just doesn't see the need for such a large garage based on what is in the code. Mr. Townsend stated that 40% of 800 s.f. isn't worth building. Mr. Zuker stated there is a difference between a basement and a cellar. A basement gets counted in the s.f. Ms. Coffey stated as discussed at the last meeting, Mr. Townsend had a couple of trucks and three motorcycles to house in the garage and if it was smaller, they probably wouldn't fit. She thinks the size

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of the proposed garage is an issue. She understands the bind he is in, but if we made an exception for him, we would be asked by people all over town to do it. She does sympathize with him, but she agrees with Mr. Zuker. The bylaw is the bylaw.

Mr. Foley stated the grading could be an issue, but there needs to be a hardship why it can't be done another way. Mr. Townsend feels he would run into property line issues with the neighbors if he relocated this. Mr. Zuker stated that the house is almost an accessory to the garage the way it is proposed now. We have a code that says what it can be. Mr. Zuker stated we don't know what percentage you are asking for over the 40%.

There were no comments from the public or further board comments.

Mr. Zuker explained to Mr. Townsend that if we vote tonight and it is a no vote, you can't come back for two years. He would suggest that this be withdrawn without prejudice so Mr. Townsend can refile or we can continue this hearing. Mr. Townsend asked to continue. Mr. Townsend granted the board an extension of time up to and including December 31, 2015.

Mr. Hiltz moved to accept an extension of time up to and including December 31, 2015 on which the board can take action on Case No. 12-15. Motion seconded by Mr. DeCelle and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Foley). Mr. Hiltz moved to continue this hearing to December 18, 2015 at 7:00 p.m. Motion seconded by Mr. DeCelle and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Foley).

Ms. Murphy returned at 7:38 p.m.

**7:39 p.m. Andrew Adams, 45 Chandler Avenue, Case No. 13-15:** Mr. Zuker read the public hearing notice and stated that the applicant was represented by Dan Merrikin, Merrikin Engineering. He provided the board with plans showing the house, proposed driveway, patio and a future covered porch. He also submitted some revised calculations and addressed Ms. Walker's comments. Mr. Zuker asked if the existing house foundation is remaining and Mr. Merrikin stated yes, but it is being expanded. Ms. Murphy stated the impervious cover is doubled. She asked if the driveway is paved now and Mr. Merrikin stated it was but it was removed. Mr. Merrikin stated they are filing for a Special Permit under 12.3.C.5. During the review of the draft decision and as per Condition #2, Mr. Hiltz stated in the event that the applicant wants to deviate from the plans provided, would there be any objection to have the plans reviewed by Margaret Walker, Town Engineer to ensure that there is no net increase to the impervious cover beyond 30.1% and as long as such changes are approved by the Town Engineer with respect to meeting the various technical requirements of Section 12 of the bylaw. Mr. Merrikin stated that is fine with him. Mr. Zuker stated it is obviously a large difference. Mr. Merrikin stated 5,000 s.f. of impervious cover is not a large use, but it is typical for the homes in town. This is a typical house with a driveway and patio and a covered porch. Ms. Murphy asked how much s.f. in the driveway and Mr. Merrikin stated 1500 s.f. He stated the intent of the bylaw is not to prevent impervious cover, but to make sure there is recharge.

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Mr. Zuker read comments from the Police Department, Conservation Commission, Board of Health, Fire Department and Town Engineer. He also read Ms. Walker's revised comments. She has stated she is all set with this application.

There were no public comments and no additional board comments. Mr. Merrikin stated that the underlying district allows for 40% impervious cover and they are at 30%.

Ms. Murphy moved to close the hearing. Motion seconded by Mr. Hiltz and voted 5-0-0.

The board agreed to modify Condition #2 in the draft decision as suggested by Mr. Hiltz. Mr. Merrikin agreed. Mr. Zuker asked that the pertinent conditions from Section 12.4.D of the Zoning Bylaw be added to the conditions of approval. Mr. Merrikin agreed. Mr. Hiltz asked that the board stated under "Findings" that Section 12.3.C.5 has been met. Mr. Merrikin agreed. Mr. Zuker asked that the verbiage "...no adverse effect on any potential or existing water supply" be added under "Reasons for Decision".

Ms. Murphy moved to approve the request for a Special Permit for Andrew Adams, 45 Chandler Avenue, Case No. 13-15 with the updated findings and conditions as discussed. Motion seconded by Ms. Coffey and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Murphy).

**8:00 p.m. Matthew Zajac, 10 Grace Memorial Drive, Case No. 14-15:** Mr. Zuker read the public hearing notice. The applicant was represented by Atty. James Brady, Main Street, Walpole and Dan Merrikin, Merrikin Engineering, Millis, MA.

Atty. Brady stated this house in question is a family homestead. Mr. Zajac was raised on this property and he would like to build a new house here. He doesn't think that Michael Yanovitch, Building Inspector, is correct in his letter. Mr. Merrikin stated that town counsel had said when they have an existing house on an undersized lot, the board needs to render a decision that the house can be demolished without abandonment; then, the new house is not considered detrimental. In 1958, these lots were considered buildable. He provided a plot plan to the board. The new house is similar to the existing house, which they do feel they need to demolish and rebuild from the ground up. Atty. Brady stated they couldn't structurally add just a second floor. Mr. Zajac also went to the neighbors and they are in support of this as it enhances the neighborhood. Mr. Zuker stated the existing house was built around 1958. What they are looking to do today is knock it down and build a new structure. Mr. Merrikin stated they thought about preserving some of the house, but they were told a second floor could not be safely done; therefore, they are asking to demolish and build from the ground up.

Mr. DeCelle asked why they are filing under Section 9-4-A instead of Section 5.B of the Zoning Bylaw. It is the lot that is deficient, not the side yards. Mr. Merrikin stated they have always come in under that section. Mr. Zuker read an email from the Building Inspector dated October 27, 2015. His question is what standard do you use to determine what to grant on something like this. Atty. Brady stated you can issue under both if you want. Mr. Merrikin stated it would be consistent with this kind of application. Both would work. Mr. Zuker stated also 40-A. Mr. Merrikin stated the new home will fit in with the

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neighborhood. Mr. Zuker stated we have fourteen letters of support from the neighbors. Ms. Murphy asked the square footage on the new house and Mr. Zajac, the applicant, stated 2200 s.f. +/- . He also stated he is not opposed to keeping the existing foundation if that makes a difference to the board.

Mr. Zuker read comments from the Police Department, Fire Department, Conservation Commission, Board of Health and Engineering.

There were no public comments.

Mr. Merrikin submitted a draft decision to the board. He also stated the house is on septic. Ms. Murphy asked if there is a time frame after the house has been demolished and Atty. Brady stated yes. Mr. Hiltz asked in terms of the building line, is the new construction behind the line as well as even with the addition and Mr. Merrikin stated yes. Mr. Hiltz stated the Building Commissioner said the issue is how the creation of a lot by ANR and not the required subdivision affects the non-compliance and its ability to claim protection under the 6-year statute of limitation. Mr. Merrikin stated he thinks he is saying he wouldn't have signed the ANR, but they comply with the zoning in effect at that time. Mr. Hiltz stated you are saying the Building Commissioner is questioning the ANR plans and whether or not they should have been signed and Mr. Merrikin stated that is correct. Mr. Hiltz asked if it is only these two areas which are beyond the original footprint of the house and Mr. Merrikin stated there are four areas that are changing from the existing footprint. Atty. Brady stated this complies with all the zoning bylaws. Ms. Murphy asked if the decision states "single family house" and Mr. Brady stated yes. Mr. Hiltz questioned what the board is determining and Mr. Merrikin stated that town counsel said to determine that the applicant can demolish the house and can then build a new house and there will not be anything considered abandonment. In other words, the Zoning Board has to grant that it is okay to demolish that structure in anticipation of building a new structure. Mr. Hiltz stated we will be saying this is a buildable lot and Atty. Brady stated you are saying that the house can be demolished and then rebuilt. Mr. Merrikin stated that per a 2011 opinion from town counsel...."if you demolish a house on a nonconforming lot, it is no longer buildable unless you have a determination from the Zoning Board of Appeals that you can rebuild". Mr. Hiltz stated that basically what is being said is there is no increase of any nonconformity or if there was an increase of nonconformity that it would not be more detrimental to the neighborhood. We are finding that before demolition that the new building can be built because it is not more detrimental; therefore, we can issue the special permit. Mr. Merrikin stated there is case law about a bigger house. Mr. Hiltz stated that because the determination is based on this is not more detrimental to the neighborhood, can we add the condition that the new house will be built according to the plan submitted at the public hearing. Atty. Brady stated that Mr. Zajac has a single set of plans and any change would be minor. Mr. Merrikin suggested the board say there will be substantial conformance to the plans that were submitted.

The Board discussed the conditions of approval, reasons for the decision and further findings.

Ms. Murphy moved to close the public hearing. Motion seconded by Ms. Coffey and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Murphy).

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Mr. Hiltz moved on behalf of the applicant to make a determination pursuant to Section 9.2.G(4) of the Zoning Bylaws to allow the existing dwelling at 10 Grace Memorial Drive to be demolished and reconstructed as proposed so that the use will not be considered “abandoned” because the proposed reconstruction will not be substantially more detrimental to the neighborhood than the existing structure. Motion seconded by Mr. DeCelle and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Murphy). Therefore, the determination application is granted subject to the following conditions: 1) The applicant shall obtain a demolition permit prior to the commencement of work; and, 2) all demolished materials shall be either reused or disposed of in accordance with local, state and federal laws and regulations.

Mr. Hiltz moved on behalf of the applicant to grant a special permit under Section 9.4.A of the Zoning Bylaw to allow the proposed reconstruction and expansion of an existing single-family residence on a non-conforming lot at 10 Grace Memorial Drive. Motion seconded by Mr. DeCelle and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Murphy). Said special permit is granted subject to the following conditions: 1) as stipulated by the applicant at the public hearing the new house will be constructed in substantial conformance with the plan entitled “Proposed Addition Plot Plan of Land in Walpole, MA” dated December 4, 2014 and prepared by Colonial Engineering, 11 Awl Street, Medway, MA which was submitted with the application. The applicant may construct a smaller house provided that a new plot plan is provided to the Building Inspector as is normally required and that the smaller house be within the footprint shown on the plan; and, 2) the applicant shall comply with Title V regarding requirements for upgrade or replacement of the septic system.

**8:50 p.m. William Cuqua, 150 Common Street, Case No. 15-15:** Mr. Zuker read the public hearing notice and stated the applicant is being represented by Atty. Jim Brady, Main Street, Walpole and Dan Merrikin, Merrikin Engineering, Millis, MA. Atty. Brady stated that this house was once the Jarvis property and they are seeking three special permits to allow the conversion of an existing two-story barn to a second housing unit. Atty. Brady stated the house and the barn are both large structures. The house in the front was a two-family which is incredibly prevalent in this area. The board issued a special permit for a house located one or two doors down. He stated there is opposition to this as will be represented by Ted Cannon. Mr. Merrikin stated this is an existing house and an existing barn which doesn’t meet the side yard requirements on the left side. The barn is too big to be an accessory structure and it will be connected to the public sewer. They are not asking to add additional structures. The applicant is proposing to add a small deck in the front and a larger deck in rear on the barn. They also want to preserve the garage/house look and will only be renovating the interior of the structure and these changes will not affect the nonconformity at all. The deck across the rear will comply and the front deck will meet the setback requirements and the height of the structure will not be affected. Further, this property is surrounded by two family structures. There is no change to the character of the neighborhood, no change to the traffic or the intensity of the use. The second property will be occupied by the applicant’s in-laws. It will look the same as it does today.

Mr. Zuker asked what the barn is presently used for and Atty. Brady stated it is two floors of storage. Mr. Zuker asked if there will be a dormer put on the back and Mr. Merrikin stated there will be a new

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gable hip on the side. Mr. Merrikin stated the deck will comply and it can encroach into the setback. Ms. Murphy asked the size of the deck and Mr. Merrikin stated 10-15' deep x 40'. Atty. Brady stated the nonconformity will not change, only the use of the house or the barn and there is no variance required. It is strictly a special permit. Further, the opponents to this also own a two family. The applicant showed all the neighbors the plans. Mr. Zuker read a letter submitted by Mr. Merrikin dated October 28, 2015 from Dan Wells, Senior Wildlife Biologist & Wetland Scientist, Goddard Consulting, Northborough, MA which stated "that any renovation or alteration of the existing barn located at 150 Common Street whether or not bats use the structure for roosting in the warmer months, is not an activity subject to the jurisdiction of MESA or the ESA."

Mr. Zuker read a letter dated October, 2015 signed by eleven neighbors from both Common Street and Ellis Street in support of this application; and, a letter dated October 28, 2015 from Glenda, Edward and Donald Watson, 15 and 26 Ellis Street; Nicholas, Vera and Maria DeRosa, 16 Ellis Street in opposition to this application. In addition, Atty. Edward Cannon, Franklin, MA representing the Watsons and DeRosas submitted a memorandum in opposition to the applicants' request for a determination and/or special permit. Atty. Cannon stated 1) that the relief requested is not appropriate as there is no non-conforming use on this property and that Section 6 doesn't apply in this instance; 2) they want to add a home that would not be in compliance as it would be 6.4' from the side yard and it has to be 10'; 3) there are some attached two families in the area, but they are not aware of any detached. This will simply be two structures on one lot which adds to the nonconformity; 4) he feels there needs to be a common driveway special permit granted by the Planning Board which he feels should be done prior to the Zoning Board vote. The applicant is asking to build a new home on this lot which will not meet the dimensional requirements. He requests, on behalf of the Watsons and DeRosa's, that the board deny this.

Mr. Zuker stated this is a lot for the board to take in and he would like to review the memos handed out tonight by Atty. Brady and Atty. Cannon as this application presents a unique set of questions for the board.

Mr. Zuker asked for public comments.

Edward Watson, 15 Ellis Street stated he owns 26 Ellis Street also and he is 100% opposed to this.

Mr. Zuker asked for board comments. He stated there are three things being asked for and two are clearer than the third. Multi-families are allowed if you meet certain criteria. He feels the board needs an opinion from town counsel. You have a structure that is non-conforming and what impact does that have on the non-conformity. There may be special case law and feels we need to seek an opinion from town counsel as this falls into a unique situation. He also recommends that both parties have a discussion. Atty. Brady stated they could tear down the barn and rebuild if they chose to. There are no bats in the barn or any endangered species. He commends the Watsons and DeRosas as Mr. Cannon is a very good attorney. He received Atty. Cannon's brief today at 6:12 p.m. He does think it's ironic that people that own two family residences are saying this will ruin their neighborhood. The concept that this barn will ruin the neighborhood is not fair. They don't need a common driveway and there are no

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other two families on the neighborhood that have a common driveway. This is one lot. In his humble opinion, a variance is not needed because this conformity is not changing. There are no bats or wildlife adversely affected. He asked Atty. Cannon if they could negotiate and he said the Watsons are not interested. He asked if the deck could be removed or screening added, but the Watsons do not want to settle. Mr. Zuker stated it is a beautiful barn and probably shouldn't be demolished. Further, it is in a GR zone. There is a legal question at hand of what is the criteria as this is a nonconforming structure change of use and what is the impact? Atty. Brady stated there are already two principal structures on that lot. He agrees that town counsel should be contacted. Mr. Zuker asked if there are wetlands on this property and Atty. Brady stated he doesn't think so, but there is water and small ponds in the back behind his own house. Mr. Zuker stated there should be discussions on mitigations. Atty. Brady stated they are open to discussing certain situations, for the record. Mr. Zuker stated the board can't rule on this until we hear from town counsel. Mr. Hiltz asked that both parties submit their briefs as electronic copies so we can send to town counsel. Mr. Zuker stated he would like to get this out to town counsel as soon as possible and he also would like to get it back to both attorneys prior to the next meeting. Atty. Brady stated he will meet with Atty. Cannon. Mr. Zuker stated he will provide the questions to town counsel along with the briefs.

Mr. Zuker moved to continue this hearing to November 18, 2015 at 7:00 p.m. Motion seconded by Ms. Murphy and voted 5-0-0.

**Board Policies and Procedures Discussion:** Mr. Hiltz asked the board if they would prefer binders or folders and it was agreed that folders would be fine. He also stated that applicants will be asked for electronic copies. Mr. Zuker recommended site visits by the board when possible.

**Minutes:** Mr. Hiltz moved to accept the minutes of September 2, 2015. Motion seconded by Mr. DeCelle and voted 6-0-0 (Zuker, DeCelle, Hiltz, Coffey, Murphy, Foley). Mr. Hiltz moved to accept the executive session minutes of September 2, 2015. Motion seconded by Mr. DeCelle and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Foley). Mr. Hiltz moved to accept the minutes of September 16, 2015. Motion seconded by Mr. DeCelle and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Foley). Mr. Hiltz moved to accept the minutes of October 14, 2015. Motion seconded by Mr. DeCelle and voted 5-0-0 (Zuker, DeCelle, Hiltz, Coffey, Foley).

Mr. Zuker moved to adjourn. Motion seconded by Mr. DeCelle and voted 6-0-0 (Zuker, DeCelle, Hiltz, Coffey, Murphy, Foley). The meeting adjourned at 9:56 p.m.

Respectfully submitted,

Craig Hiltz, Chairman

Accepted on 11/18/15